

Triennial Review of the Basin Plan

Workplan

- Page 19 Add to the end of the fifth paragraph of the Discussion under Issue No. 8 as follows:
“Drinking water purveyors are also concerned over taste and odor problems from algae associated with high nutrient levels. There are also concerns over the presence of algal species that are known to produce algal toxins.”
- Page 31 Revise the priority for Issue No. 13 to high.

Response to Comments

- Page 1 Add to list of Commenters the following commenters:

Written comments received as a result of the Notice of Public Hearing:

21. *Mr. Michael Boccadoro, California Food Production & Processing Coalition (64-65)*
22. *Mr. Allen Short, San Joaquin River Group (66-69)*
23. *Mr. John Hewitt, California Farm Bureau Federation (70-71)*
24. *Ms. Kathleen Martyn Goforth, US Environmental Protection Agency (72-76)*
25. *Mr. Mic Stewart, Metropolitan Water District of Southern California (77)*
26. *Mr. Steve Macaulay, California Urban Water Agencies (78)*
27. *Mr. Steven G. Bayley, City of Tracy (79-83)*

- Page 10 Revise response to Comment No. 16 as follows:

A use attainability analysis is a scientific analysis to determine whether a use can be attained. Section 131.10(j) of Title 40 of the Code of Federal Regulations very specifically describes when a state must conduct a use attainability analysis. Note that for the “fishable and swimmable” beneficial uses, federal regulations require that a use attainability analysis be conducted to determine that these uses cannot be attained in order to designate beneficial uses that do not provide full protection for these uses. ~~All the waterbodies~~ **Waterbodies** in the Sacramento River and San Joaquin River Basins have designated beneficial uses either directly identified in Table II-1 or indirectly through the “tributary rule.” If any waterbodies are identified that do not have designated beneficial uses, the non “fishable and swimmable” beneficial uses will be evaluated against the UAA criteria prior to designation. See Issue No. 1 for more details on this issue.

Michael Boccadoro, California Food Production & Processing Coalition

64. *The Coalition concurs with and supports the Staff Recommendation that a Salt Management Policy is a high priority that merits additional resources to develop. The Coalition submits that such a Policy should be the highest-listed priority in the Triennial Review and looks forward to continuing to work with the Board toward that end.*

Comment noted

65. *The comprehensive salinity management strategy should take into account certain considerations, such as recognition of the efforts of dischargers to address salinity issues, etc.*

Comments are not relevant to the development and prioritization of issues but are relevant to the further work on the specific issue of developing a salt management policy. Comments have been forwarded to staff working on the specific issue.

Allen Short, San Joaquin River Group

66. *Agrees with the following issues: (1) Beneficial use designations; (2) Regulatory guidance to address water bodies dominated by NPDES discharges; (3) Regulatory actions in agricultural dominated water bodies and agricultural conveyance facilities; and (10) Salt management policy.*

Comment noted.

67. *Disagrees with Issue 4 - Regulatory Guidance for Salinity and Boron Discharges to the San Joaquin River. Has a request pending with the State Water Board to remove the salt and boron 303(d) listing for the San Joaquin River. Therefore, no water quality objectives or TMDLs should be developed until the State Water Board acts on this request.*

The federal requirement that requires listing waterbodies that are not attaining water quality standards and the subsequent development of waste load allocations is not the sole reason for this issue or its priority. Salt in the San Joaquin River has been an identified problem since the first basin plan. Under the California Water Code, water boards are required to establish water quality objectives to ensure the reasonable protection of beneficial uses and describe a program of implementation for achieving water quality objectives. Therefore, it is necessary for the Central Valley Water Board to continue working on this problem until it is resolved.

68. *Disagrees with Issue 5 - Dissolved Oxygen Problems in San Joaquin River near Stockton. Disagrees that dissolved oxygen has caused declines of fall run Chinook Salmon, disagrees that fall run Chinook Salmon populations have declined in the San Joaquin River, or that low dissolved oxygen kills fall run Chinook Salmon in the Stockton Deep Water Ship Channel. Therefore, the Central Valley Water Board should re-do, in its entirety, the DO TMDL. At a minimum, the Central Valley Water Board needs to require the Department of Fish and Game to justify the DO objectives for the Delta and then adopt new standards and objectives to protect justifiable beneficial uses.*

Triennial review Issue No. 5 includes review of the recently adopted TMDL. In regards to the dissolved oxygen objectives, please note that the water quality objective of 6 mg/l between 1 September and 30 November was adopted in the Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Estuary adopted by the State Water Board. As specified in section 13170 of the California Water Code, State Water Board adopted water quality control plans supersede any regional water quality

control plans for the same waters to the extent of any conflict. Comments regarding this water quality objective should be addressed to the State Water Board.

69. *Disagrees with part of Issue No. 9 - Temperature Objectives to Protect Spring Run Salmon and Steelhead. The San Joaquin Tributaries Association has provided NOAA with a sixty-day intent to sue letter in regards to the NOAA designation of steelhead as endangered. No work should be done on establishing temperature objectives for steelhead until it is resolved that they are or aren't a threatened species. In addition, CALFED is funding a Stanislaus, Tuolumne, Merced and mainstem San Joaquin River, Merced to Vernalis, temperature model.*

While the triennial review issue description includes the NOAA designation for steelhead, that is not the reason for the issue or its priority. Steelhead is one of the two species that are the basis for the coldwater migration and spawning beneficial uses. In order to protect the beneficial uses, it is necessary to establish to appropriate water quality objectives. The Department of Fish and Game, the state's expert on fishery resources, has identified the development of temperature objectives as necessary to protect this beneficial use in the form of the spring run Chinook salmon and steelhead. If resources become available to address this issue further, all relevant information will be solicited to develop the objectives.

John Hewitt, California Farm Bureau Federation

70. *Believes that significant information currently exists for several of the highest priority issues. As such, additional resources should be made available from other Regional Water Board programs to complete the work as soon as possible.*

Comment noted. As possible, resources to work on high priority issues have been identified and diverted. However, programmatic resources do not allow for funding any activities other than the ones specifically identified for the program.

71. *In the response to comments, page 10 at item 16, the response states, "All the water bodies in the Sacramento River and San Joaquin River Basins have designated beneficial uses either directly identified in Table II-1 or indirectly through the 'tributary rule.'" This statement is inaccurate and should be removed or amended to more accurately reflect Resolution No. R5-2005-0137 and its Information Sheet.*

The statement has been revised to "~~All the water~~ Water bodies in the ..."

Kathleen Martyn Goforth, US Environmental Protection Agency

72. *Agrees that Issues 1 through 12 should be a high priority.*

Comment noted.

73. *Under the "Additional Action" in Issue No. 1, the proposal is to identify possible groupings of water bodies for study to determine the appropriate beneficial uses. The Clean Water Act requires a demonstration, consistent with the requirements of 40 CFR 131.10(g), that the full use is not attainable in that water body in order to not designate one of the uses described in section 101(a)(2) of the Clean Water Act or to remove or subcategorize a use from a water body.*

The Central Valley Water Board agrees that full compliance with the Clean Water Act is necessary. However, there may still be efficiencies in grouping water bodies. This should be fully explored to assure that the process is as efficient as possible. For example, perhaps key characteristics might be identified in certain water bodies that demonstrate a certain beneficial use ought to be or ought not to be designated. Water bodies that have this characteristic could be identified, and thus individually evaluated, and might go through the basin plan amendment process together, thus providing significant staff resource savings.

74. *The “Discussion” section in Issue No. 3 notes that many water bodies in the Central Valley have been modified or constructed for the purpose of conveying agricultural drainage, and that “stakeholders have requested that the Central Valley Water Board develop plans and policies that recognize that the functionality of the modified water body should take precedence over any perceived beneficial uses.” It should be noted that the federal regulation at 40 CFR 131.10(a) prohibits states from adopting waste transport or waste assimilation as a designated use for any waters of the United States, and that 40 CFR 131.10(b) requires the State “to ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters”. The Work Plan notes, appropriately, that Issue #3 is related to Issues #1 and #2, and may be addressed, at least in part, by efforts geared to address those issues.*

The Central Valley Water Board will comply with the Clean Water Act in any basin plan amendments. The Central Valley Water Board neither agrees nor disagrees with the statements contained in the discussion parts of the triennial review workplan. The discussion statements are meant to explain the possible need and urgency of the issue. The Central Valley Water Board only agrees that these issues are appropriate planning issues and should be prioritized as described in the workplan. All the issues must be further developed as described in the Current or Additional Actions.

75. *Supports Issue No. 6, Pesticide Control Efforts, and notes that EPA recently issued final criteria guidance for diazinon and nonylphenyl.*

Comment noted. EPA guidance is considered in the development of water quality objectives.

76. *EPA comments during the scoping phase of the Triennial Review include assigning a high priority to developing appropriate dissolved oxygen objectives for the Delta. The draft workplan assigns this issue a low priority with no current action nor resources. EPA’s understanding, based on discussions with Regional Board staff, was that studies of current and attainable dissolved oxygen conditions in the Delta would be needed to support development of appropriate objectives. This is inconsistent with the workplan which identifies no contract resource needs. It is not clear whether this reflects a determination that adequate data are currently available to support development of appropriate objectives, or that the cost of generating such data has not yet been estimated. If the former, we again recommend the Regional Board proceed with the development of appropriate objectives. If the latter, we recommend that an assessment of the scope and costs of the necessary studies be prepared.*

Scoping the resource needs for development of dissolved oxygen objectives in the Delta is dependent on implementation of the recently adopted dissolved oxygen TMDL for the Stockton Deep Water Ship Channel. However, this amendment is still undergoing approval and will not be far enough along during this triennial review period.

Mic Stewart, Metropolitan Water District of Southern California

77. *The Drinking Water Policy issue should include a discussion of impairments that are nutrient related.*

Discussion added.

Steve Macaulay, California Urban Water Agencies

78. *The Drinking Water Policy issue should include a discussion of impairments that are nutrient related.*

See response to Comment No. 77.

Steven G. Bayley, City of Tracy

79. *The Regional Board should update its designated uses to ensure that these uses reflect actual existing or probable future uses of the waters in question.*

The Central Valley Water Board agrees that appropriate beneficial use designations are a high priority. See Issue No. 1 in the workplan.

80. *The Board should instruct staff to review all water quality objectives to make sure they reflect the most current science and local water quality conditions, and to adopt numeric objectives applicable to local waters instead of relying upon vague narrative requirements as narrative objectives were only meant to be interim measures until numeric objectives could be adopted. Federal regulations note that narrative criteria were promulgated to control a pollutant of concern until the state promulgates a water quality criterion. Thus, the Regional Board has exceeded its authority by relying on the narrative water quality objectives for toxicity indefinitely, and particularly where ample information in the form of Clean Water Act 304(a) criteria guidance exist to allow the Regional Water Board to properly adopt numeric water quality objectives.*

The review of water quality objectives is Issue No. 19 of the workplan. The Central Valley Water Board, as well as the rest of the State, is in compliance with the federal requirements to establish numeric criteria for toxic pollutants due to the promulgation of the National Toxics Rule (NTR), the California Toxics Rule (CTR) and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, 2005 (SIP). EPA criteria guidance, as required under section 304(a) of the Clean Water Act, is the basis of the NTR and CTR. The Central Valley Water Board disagrees that the toxicity objective is vague. It includes a list of the sources, including discharger information, which will be considered by the Board to determine compliance with the objective.

81. *The Board should remove the prospective incorporation-by-reference method of adopting water quality objectives for surface waters and ground water basins.*

Compliance with MCLs adopted by the Department of Health Services (DHS) is required for water in regulated drinking water distribution systems. Drinking water is a component of the municipal and domestic supply beneficial use. Lack of compliance in source waters can impair the use of water or necessitate costly treatment. DHS adopts new MCLs in an open public process that is essentially the same as the process that the Regional Water Board would go through to adopt water quality objectives. There would be no purpose for the Regional Water Board to consider the same information that has already been considered by DHS in adopting MCLs. The MCLs become water quality objectives that must be met to protect the drinking water beneficial use. The current form of the Basin Plan, including the language regarding prospective incorporation by reference has been approved by the Office of Administrative Law and USEPA.

82. *When new objectives are ultimately adopted or previous objectives are revised, the Board must ensure that the statutorily-required consideration of all of the factors enumerated in Water Code section 13241 occurs, and that the final objectives are "reasonable."*

When the Central Valley Water Board adopts water quality objectives, the Board will comply with all applicable federal and state laws.

83. *The City requests that the Regional Water Board adopt an implementation plan for meeting each objective contained in the Basin Plan along with a timeline for doing so as required by Water Code section 13242.*

The Central Valley Water Board has adopted an implementation plan to attain the water quality objectives as required by the California Water Code. As water quality objectives are established or revised, an implementation plan and time schedule are included if the new objectives are not being met at the time of adoption. Water bodies that are not meeting the applicable water quality standards are being identified as impaired in the Clean Water Act section 303(d) list. Time schedules for developing total maximum daily load allocations for these water bodies are part of the list.